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August 25, 1992

Honorable Dick Frank  
Assessor of San Luis Obispo County  
County Government Center, Room 100  
San Luis Obispo, CA 93408

Attention: Ms. Barbara L. Edginton  
Deputy County Assessor

Dear Mr. Frank:

This is in response to your letter of April 2, 1992 to the attention of Mr. Richard Ochsner in which you request our opinion as to whether a change in ownership occurred as a result of the following facts described in your letter and other materials provided to us and which are set forth below.

In early February 1978, Dr. \_\_\_\_\_ purchased seven parcels of land at a county tax sale but title to the land was placed in the name of \_\_\_\_\_, a friend, at the direction of Dr. \_\_\_\_\_. According to a newspaper account, and copies of receipts for checks received in payment, Dr. \_\_\_\_\_ paid \$240,900 for the parcels which totaled 260 acres.

In his letters of March 15, 1992 and April 23, 1992, Dr. \_\_\_\_\_ explains, among other things, that these parcels were most of the parcels in a "section" of land and that it was his intent to acquire the remaining parcels, as he was able, to complete the entire ownership of that "section". When the project was completed, the "proceeds" were to be given to his church. At the time, he was practicing medicine as an anesthesiologist and his malpractice insurance would have been \$35,000.00 a year. He states that he could not conscientiously pass that cost along to his patients by charging higher fees so he elected not to carry insurance. He had no thought of being sued, but if something were to happen, he could not bear to see his project disrupted. He would have given it to the church at that time, but as a nonprofit organization, he states that the church could not assemble the project as a business. Since he was not married, he elected to put the property in a "holding" name of the only person he trusted implicitly, which was Trudy \_\_\_\_\_.

Dr. \_\_\_\_\_ states that Trudy \_\_\_\_\_ did not pay one cent for the property, at no time did she pay the taxes, and "at

no time did she declare it on her income tax." Rather, he, Dr. [redacted] claims to have done all of the above. Copies of his income tax returns for several relevant years tend to corroborate these claims. He says that Trudy signed an affidavit in which she disclaimed ever having any rights in the property and stated that she was solely a nominee but that affidavit was not provided to us. In addition, there is a recorded continuing farming agreement between Dr. [redacted] and [redacted] dated January 9, 1989 which recites that the agreement originated in 1978.

Dr. [redacted] obtained a power of attorney executed by Trudy January 14, 1977 and quitclaim deeds that were executed by her in 1978. He held them in his safe deposit box but they were never recorded.

Except for the power of attorney and quitclaim deeds, Dr. [redacted] and Trudy had only a verbal agreement. When Trudy married in 1983, Dr. [redacted] obtained a new set of quitclaim deeds from Trudy and her husband. The earlier quitclaim deeds cannot be located, but there are copies of the 1983 deeds, which were also unrecorded until 1990.

Dr. [redacted] has now retired from his medical practice. In May 1990, he created a trust and conveyed title to the properties to the trust. The deeds executed by Trudy and her husband in 1983 were recorded in order to effect the transfers.

You have asked whether, based on the foregoing, a change in ownership occurred as a result of conveyances by Trudy to Dr. [redacted].

As you know a "change in ownership" under Revenue and Taxation Code Section 60 requires that there be a transfer of a present interest in real property, including the beneficial use thereof, the value of which is substantially equal to the value of the fee interest. Thus, Trudy must have had the beneficial ownership of the subject property in order for her conveyances to Dr. Tarr to constitute a change in ownership.

It is true that under Evidence Code Section 662, the owner of the legal title to real property is presumed to be the owner of the beneficial title. Such presumption, however, may be rebutted by clear and convincing proof. Here, the proof, if you find it credible, seems to indicate that Dr. [redacted] continued to be the beneficial owner of the property. Further, however, it is well established law that when a transfer of property is made to one person, and the purchase price is paid by another, a trust is

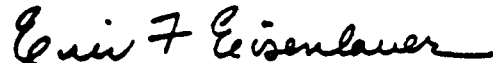
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presumed to result in favor of the person by whom such payment is made. Witkin Summary of California Law (9th ed. 1990) sections 300-304, pages 1134-1138. There seems to be no dispute here that Dr. Tarr paid the purchase price of the subject properties at or prior to the time the legal title was transferred to Trudy.

Accordingly, when the county conveyed the property to Trudy, a resulting trust in favor of Dr.                      was presumed to arise meaning, of course, that Trudy presumptively held the legal title as a resulting trustee for the benefit of Dr.                      , the beneficial owner. None of the evidence provided to us would tend to rebut that presumption.

In short, all of the evidence presented to us seems to support Dr.                      contention that he rather than Trudy remained the beneficial owner of the subject real property from the time of purchase in 1978. The conveyances by Trudy to Dr.                      , therefore, would not constitute changes in ownership.

Very truly yours,



Eric F. Eisenlauer  
Senior Tax Counsel

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cc: Mr. John Hagerty  
Mr. Verne Walton